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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

In re:

BURNT RICE KOREAN RESTAURANT,
INC.

Debtor

Case No.: 15-53371-MEH

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION TO VALUE COLLATERAL OF
AKRIBIS GROUP, LLC.**

CHAPTER 11

Date: None set
Time: None set
Court: None set

COME NOW Debtor BURNT RICE KOREAN RESTAURANT, INC. ("Debtor" hereinafter), by and through The Fuller Law Firm, P.C., its attorney of record, and submits this Memorandum of Points and Authorities in Support of its Motion to Value Collateral of Akribis Group, LLC ("Lender" hereinafter) and represents as follows:

MEMORANDUM OF POINTS AND AUTHORITIES

LEGAL ARGUMENT

Rule 3012 of the Federal Rules of Bankruptcy Procedure deals with the procedure in the valuation of a secured claim. It reads in pertinent part: "The court may determine the value of a

1 claim secured by a lien on property in which the estate has an interest on motion of any party in
2 interest....” As the debtor in the subject matter, Debtor is the proper party “in interest” within the
3 meaning of 11 U.S.C. §3012 and may therefore assert its rights to present this motion to the court.

4 Bankruptcy Code Section 506(a)(1) states that an allowed claim secured by a valid lien on
5 certain property is secured to the extent of “the value of such creditor’s interest in the estate’s
6 interest in such property.” In interpreting this section, the Supreme Court has equated the quoted
7 language with “value of the collateral.” See United Savings Ass’n of Texas v. Timbers of Inwood
8 Forest Assocs., Ltd., 484 U.S. 365 (1988).

9 Bankruptcy Code Section 506(a)(1) further states that an allowed claim secured by a valid
10 lien on certain property is “an unsecured claim to the extent that the value of such creditor’s
11 interest ... is less than the amount of such allowed claim.”

12 Once an under-secured claim has been bifurcated, the court may confirm a Chapter 11
13 reorganization plan that pays the secured part of the under-secured claim over time and the under-
14 secured part of the claim together with other unsecured creditors. 11 U.S.C. §1129(b)(2)(A). *In re*
15 *Weinstein* 227 BR 284, 292 fn8 (9th Cir. BAP 1998).

16 Section 506(a)(1) provides a flexible, case-by-case standard, under which the court should
17 determine the value of collateral “in light of the purpose of the valuation and of the proposed
18 disposition or use of such property....” This standard suggests that the court’s determination of
19 the collateral’s “market value” is a function of both the debtor’s proposed use of the collateral and
20 the procedural context of the bankruptcy case. Therefore, as is the case herein, if debtors propose
21 s to retain the collateral under its plan, a court evaluating the debtors’ plan should value the
22 collateral based on its “replacement value” --- i.e., the price that it would cost the debtor to
23 purchase similar property in a market transaction. [§506(a)(2)] See Associates Commercial Corp.
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1 v. Rash, 520 U.S. 953 (1997) which held the replacement value measure appropriate in context of
2 a debtors' proposal to retain collateral over objection of a secured party.

3 Here, Debtor, relying on a business appraisal, believes that the current value of the
4 corporate assets is \$60,000.

5
6 CONCLUSION

7 For the foregoing reasons, and based upon the legal arguments set forth in this Motion
8 and the accompanying declaration, Debtor requests the Court grant the Motion to Value
9 Collateral for the Purpose of Modifying the Lender's lien forthwith.

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11 Dated: Nov. 18, 2015

Respectfully submitted,

12 THE FULLER LAW FIRM, P.C.

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15 By: /s/ Lars T. Fuller
16 LARS T. FULLER
Attorney for Debtor